



**Texas House of Representatives Elections Committee  
Written Testimony on Interim Charge #1, September 18, 2020**

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To Chair Klick and members of the Texas House Elections Committee:

My name is Ali Lozano, and I am the Voting Rights Outreach Coordinator at the Texas Civil Rights Project (TCRP). Thank you for the opportunity to provide this testimony on Interim Charge #1.

For purposes of this written testimony, we'd like to focus on [HB 4130](#), which requires the Texas Secretary of State to develop procedures for adequately certifying electronic poll books and mandating real-time updates; monitoring and reporting on countywide polling; and examining the number, locations, and wait times of polling places and polling booths.

*Overview*

Threats to election security and integrity abound in our current election systems and administrative policies, but not from “voter fraud.” The rampant problem facing the agencies and programs under your jurisdiction is voter suppression, as overwhelming data and expert opinion unquestionably demonstrate. Since 2012, 1,688 polling places have closed in states previously subject to Section 5 of the Voting Rights Act, and Texas leads at the top of that list with 750 polling location closures (nearly half the total). Wait times for voters are routinely way too high across the state, and voting machines routinely fail everywhere, particularly in communities of color.<sup>1</sup> These issues are blaring red flags that call for substantial new investment in the latest voting technology and robust poll worker recruitment and training. No voter wait six hours to vote, as happened during the March 2020 primary.<sup>2</sup>

The Legislature’s guiding principle next session should be to ensure that any **intent** to secure our elections does not morph into detrimental **impact** on Texas voters, as seen with Senate Bill 9 last session.

*Invest in Modern Technology that Benefits Texas Voters*

There are no national standards for electronic poll book (“e-pollbooks”) operations or security. The intent of HB 4130 was to establish technological safeguards in counties that adopted countywide polling.<sup>3</sup> Since e-pollbooks are a key requirement for participating in the Countywide Polling Place Program (“CWPPP”), minor, fixable flaws in connectivity were quickly weaponized into a calculated

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<sup>1</sup> Alexa Ura, *Texas lawmakers to hold hearing into excessive Super Tuesday voting lines*, THE TEXAS TRIBUNE, (March 5, 2020), <https://www.texastribune.org/2020/03/05/texas-lawmakers-excessive-voting-lines-primary/>.

<sup>2</sup> Todd J. Gillman, James Barragán and María Méndez, ‘No one should wait six hours to vote,’ but in Texas, thousands did on Super Tuesday, THE DALLAS MORNING NEWS, (March 4, 2020), <https://www.dallasnews.com/news/politics/2020/03/05/no-one-should-wait-six-hours-to-vote-but-in-texas-thousands-did-on-super-tuesday/>

<sup>3</sup> Election Advisory No. 2019-21 to County Election Officers, (Oct. 15, 2019), available at <https://www.sos.state.tx.us/elections/laws/advisory2019-21.shtml>



effort to squash the CWPPP, which has become increasingly popular among voters because of its convenience.

When it comes to electronic poll books, Texas should continue to invest in the latest technology to ensure that elections are conducted efficiently and accurately. E-pollbooks expedite the administrative process and lower staffing needs, and the adoption of uniform standards gives counties the flexibility to adopt new systems while providing basic guidelines for how they serve the goals of free and fair elections.

However, some have attempted to selectively utilize the requirement that e-pollbooks must “update data in real time” against counties that have recently transitioned to countywide voting and use e-pollbooks that update reasonably quickly but not literally instantaneously. While e-pollbooks must update sufficiently quickly to prevent systematic efforts to vote more than once, the Committee should not be deceived by wild claims that de minimis delays in updating somehow open the door to *widespread* “voter fraud” (for which there is zero evidence in Texas) justifying new restrictions on voting.

For security concerns around e-pollbook malfunctions, county officials can consider the following recommendations from The Brennan Center<sup>4</sup>:

1. Limit or eliminate connectivity to wireless networks whenever possible.
2. Implement proper security protocols when wireless connectivity is required.
3. Ensure that systems are properly patched as part of Election Day preparations.
4. Keep appropriate backup of e-pollbooks in polling places.
5. Provide sufficient provisional ballots and materials for two to three hours of peak voting.
6. Train poll workers to implement pollbook contingencies.

#### *Enhance Programs that Benefit Texas Voters*

In counties where the CWPPP has been implemented it has been well-received as a largely effective, responsible solution to several of the most common problems encountered by voters during election time, such as disenfranchisement due to showing up at the wrong precinct or polling location. During each major election, thousands of people across the state are disenfranchised because they showed up to vote on Election Day in the wrong precinct in a county with precinct-only voting. For example, Texas’s 5 largest counties rejected over 4,000 people’s provisional ballots for this reason during the November 2018. The CWPPP has also proven to be extremely popular among Texas voters, as evidenced by its expansion across the state in recent years.<sup>5</sup> January 2020 data shows that for the first time ever, as many as 75% of Texans will have lived in a county with county wide vote centers.<sup>6</sup>

A specific example is Harris County, which is currently the largest jurisdiction in America to have implemented countywide polling. After the county first used the program in May 2019, Rice

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<sup>4</sup> Edgardo Cortés, Gowri Ramachandran, Elizabeth Howard, and Lawrence Norden, *Preparing for Cyberattacks and Technical Failures: A Guide for Election Officials*, THE BRENNAN CENTER FOR JUSTICE, (Dec. 19, 2019), <https://www.brennancenter.org/our-work/policy-solutions/preparing-cyberattacks-and-technical-failures-guide-election-officials>

<sup>5</sup> Counties Approved to Use the Countywide Polling Place Program (CWPP) for the November 3, 2020 General Election, available at <https://www.sos.state.tx.us/elections/laws/countywide-polling-place-program.shtml>

<sup>6</sup> Nic Garcia, *Dallas, Tarrant win approval to move forward with countywide voting*, THE DALLAS MORNING NEWS, (Dec. 30, 2019), <https://www.dallasnews.com/news/elections/2019/12/30/dallas-tarrant-win-approval-to-move-forward-with-countywide-voting/>



University<sup>7</sup> conducted and published a post-election study indicating that two-thirds of voters surveyed were aware they could vote at any polling place on Election Day, and that 90% had a positive opinion of their voting experience. These overwhelmingly affirmative statistics, among the other data included in the post-election survey, prove that in the third largest county in the country, voters considered countywide polling as a convenient voting option that made their voting experience more positive.

There's been no evidence that transitioning to countywide voting has led to an increase in "voter fraud." While we strongly support the use of the Countywide Polling Place Program, we also know that current state law allows for counties to weaponize this program against predominantly communities of color and poor communities through substantial cuts to the number of polling locations required to be maintained when a county shifts to countywide polling. In fact, a county may close up to 35% of polling locations in the first year of the program's use and up to 50% of polling locations thereafter.<sup>8</sup> These percentages need to be tightened so that the transition to countywide voting isn't used to eliminate polling locations in our most marginalized and vulnerable communities.

Texas counties have closed more polling locations in the last six years than any other state. These closures have come in significant part from counties moving to countywide polling, presumably because they are allowed to make deep cuts under state law. The threats that mass closure of polling locations has on voters cannot be understated. They include restricting access to polling locations for communities of color, people with disabilities, poorer neighborhoods, and others. The CWPPP is meant to be a positive reform for increased accessibility and convenience, not another tool of voter suppression.

Our ask of you is this: maintain the benefits of the CWPPP while also enhancing the program. Enhance it by substantially increasing the minimum percentage of polling locations that must remain open under the program closer to 80%, which would go a long way toward ensuring that communities who would likely be harmed by mass polling place closures are protected under this program, as is their right as residents and eligible voters of Texas. Another change for your consideration in 2021 is removing the cap on the number of counties that may transition to countywide voting in any given year.

#### *Require Stronger, Objective Oversight by the Texas Secretary of State*

The hyper-focus on connectivity issues and flaws with e-pollbooks has served not only as weak reasoning to reject Countywide Polling, but also as a blatant distraction from the real threat to our election integrity. Mass polling location closures and lack of compliance by counties around the number of polling locations have served as the foundational pillars for widespread voter suppression in this state, particularly aimed at Black and brown Texans, as well as young voters on college campuses.

#### Mass Polling Location Closures

According to a comprehensive national report done by The Leadership Conference Education Fund, not only does Texas constitute over half of all polling location closures nationwide since the 2013 *Shelby vs. Holder* Supreme Court decision, but mere "hours after the Shelby decision, the Texas attorney general announced the state would implement a voter ID law that had been blocked from taking effect from 2011–2013 under Section 5's preclearance system. In 2017, a federal judge ruled that the law was enacted to intentionally discriminate against Black and Latino voters."<sup>9</sup> Further, an investigation

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<sup>7</sup> An Evaluation of Election Day Vote Centers in Harris County, Texas: 2019 Harris County Joint Election, available at <https://www.harrisvotes.com/Docs/VotingCenters/An%20Evaluation%20of%20the%20May%202019%20Harris%20County%20Joint%20Election%20Final.pdf>

<sup>8</sup> See Tex. Elec. Code § 43.007(f).

<sup>9</sup> The Leadership Conference Education Fund, *Democracy Diverted: Polling Place Closures and the Right to Vote* at 26–28, (Sept. 2019), available at <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>.



conducted by The Guardian in March 2020 concluded that “the places where the [B]lack and Latinx population is growing by the largest numbers have experienced the vast majority of the state’s poll site closures.”<sup>10</sup> And this was all *before* the COVID-19 pandemic further complicated the process.

“Counties like Somervell (–80 percent), Loving (–75 percent), Stonewall (–75 percent), and Fisher (–60 percent) — all of which have large Latino populations — cut voting locations even though they did not transition to vote centers. In fact, voters in counties that still hold precinct-style elections have 250 fewer voting locations than they did in 2012.” Nueces County, which is 63% Latinx and Jefferson County, which is 34% African American and 20% Latinx, have drawn particular scrutiny precisely because of their noncompliance with the VRA and/or weaponization of the CWPPP to cut polling locations.<sup>11</sup>

New county-level data provided by the Texas Secretary of State’s Office to the United States House of Representatives Select Subcommittee on the Coronavirus Crisis specifically notes that the second-most frequent concern cited by Texas counties was ensuring enough polling locations with sufficient space to follow social distancing guidelines and prevent long lines. But COVID-19 did not create new problems when it comes to insufficient polling locations or voting rights—it merely highlighted pre-existing issues in a State which has targeted Black and brown communities for decades.

#### Inconvenient Polling Locations

For years, Texas has been particularly hostile towards university and college campuses functioning as polling sites.<sup>12</sup> In 2018, our election protection team heard dozens of reports of polling places moving, closing, or placed in inconvenient areas. One frequent complaint was the lack of polling places on college campuses. Students spend a great deal of time on campus, and less than half bring cars to school.<sup>13</sup> Students at Prairie View A&M told the Secretary of State that those without transportation “had to walk more than a mile” to their polling place, then “wait in line near a busy roadway.”<sup>14</sup>

Texas has more than 20 universities with student body populations over 10,000, but only seven of those universities had polling places in the 2018 election,<sup>15</sup> many of which were either only available during Early Voting or only available on Election Day. The enrollment in these universities is currently more than 565,000 students.<sup>16</sup> If we subtract the seven universities that already had polling places in 2018 for part of the voting period,<sup>17</sup> we are left with more than 275,000 students.<sup>18</sup> The average rate of

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<sup>10</sup> Richard Salame, *Texas closes hundreds of polling sites, making it harder for minorities to vote*, THE GUARDIAN, (Mar. 2, 2020), <https://www.theguardian.com/us-news/2020/mar/02/texas-polling-sites-closures-voting>.

<sup>11</sup> *Supra* note 9.

<sup>12</sup> Alexa Ura, *Student voting rights fight erupts at Texas State University*, THE TEXAS TRIBUNE, (Oct. 25, 2018), <https://www.texastribune.org/2018/10/25/student-voting-rights-fight-erupts-texas-state-university/>.

<sup>13</sup> Ilana Kowarski, *11 Universities Where Students Rarely Bring Cars*, U.S. NEWS (Mar. 6, 2018), <https://www.usnews.com/education/best-colleges/the-short-list-college/articles/2018-03-06/11-national-universities-where-students-rarely-bring-cars>.

<sup>14</sup> Elizabeth Sohns, *College Campus Voting Booths and Their Impact on Millennials*, GENERATION PROGRESS (Apr. 4, 2014), <https://genprogress.org/college-campus-voting-booths-and-their-impact-on-millennials/>.

<sup>15</sup> American-Statesman Editorial Board, *Editorial: Polling Places Should Be Standard At Large Texas Universities*, AUSTIN AMERICAN-STATESMAN (Jan. 24, 2019), <https://www.statesman.com/opinion/20190124/editorial-polling-places-should-be-standard-at-large-texas-universities>.

<sup>16</sup> List of universities in Texas by enrollment, WIKIPEDIA, [https://en.wikipedia.org/wiki/List\\_of\\_universities\\_in\\_Texas\\_by\\_enrollment](https://en.wikipedia.org/wiki/List_of_universities_in_Texas_by_enrollment).

<sup>17</sup> Texas A&M, University of Texas at Austin, University of Houston (only for one campus), Texas State University (part of early vote), Texas Tech University, University of Texas San Antonio, and University of Texas Rio Grande Valley (temporary polling location).

<sup>18</sup> See Sam Pesbek, *How to Vote in the 2018 Midterm Elections at Texas A&M*, TEXAS A&M TODAY, (Sept. 25, 2018), <https://today.tamu.edu/2018/09/25/how-to-vote-in-the-2018-midterm-elections-at-texas-am/> (showing Texas A&M



international student enrollment at Texas colleges is about 5.6%, so we can assume that about 94.4% of those are eligible to vote.<sup>19</sup> That leaves potentially more than 260,000 eligible college students who may lack an accessible place to vote. In other words, if all of Texas's universities with over 10,000 enrolled students were to have a polling place open through Early Voting and on Election Day, at least 260,000 more students could have the opportunity to vote where they live, work, study, and socialize.<sup>20</sup>

### Insufficient Number of Polling Locations that Violates Texas Election Code

After the November 2018 General Election, the Voting Rights team at TCRP undertook a statewide review of counties' compliance with state election laws. What we found was disturbing: Dozens of Texas counties across the State—big and small, urban and rural—violated the Election Code by collectively providing hundreds of fewer polling places than required under state law.<sup>21</sup> The lack of sufficient polling sites inevitably leads, and has led, to longer lines and subsequently longer, burdensome wait times. Worse, it was clear that disparate impacts were felt in communities of color, and that if these Counties were not pressured to offer more polling places, they would again violate the law in 2020.

Thanks to the work of TCRP, McLennan and Smith counties have committed to adding more polling locations after our review showed that they didn't provide voting centers in heavily minority areas of their largest cities (Waco and Tyler) in 2018, potentially in violation of the Voting Rights Act.

All of this shows that the 2021 Texas Legislative Session should be focused on expanding access to voting as much as possible. It is unacceptable that Texas counties routinely violate Texas law by providing too few polling places at the expense of communities of color. Given the state's egregious history of racially discriminatory behavior through voter suppression and gerrymandering, the Texas Secretary of State bears the legal responsibility of ensuring that Texas counties comply with the Election Code, and other election laws, so that every citizen has an equal opportunity to cast their vote. That office also bears the responsibility of ensuring that voting is as safe as practical—the bare minimum of which requires compliance with the law. Nonetheless, the Texas Secretary of State has yet to take any steps to curb blatant violations. We would encourage this legislative body to mandate stronger, objective oversight of Texas counties for fairer elections.

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as a polling location); Harris County Polling Locations List: November 6, 2018 General and Special Elections,g (on file with the author) (showing the University of Houston as a polling location); Travis County Election Day Vote Centers: Tuesday, November 6, 2018 (by Precinct) (on file with the author) (showing UT Austin as a polling location); Chelsea Cunningham, *Texas State Students to get Extra Days to Early Vote Following Complaints*, KVUE, (Oct. 26, 2018), <https://www.kvue.com/article/news/politics/vote-texas/texas-state-students-to-get-extra-days-to-early-vote-following-complaints/269-608440240> (showing Texas State as a polling location); Lucinda Holt, *What You Need to Know: 2018 General Election*, THE HUB@TTU, (Nov. 1, 2018), <https://www.ttuhub.net/2018/11/what-you-need-to-know-2018-general-election/> (Showing Texas Tech as a polling location); Bexar County Joint General, Special, Charter and Bond Election, November 6, 2018 (on file with the author) (showing UTSA as a polling location); Jesus Sanchez, *Brownsville Voters Head to Polls for 2018 Elections*, THE HERALD, (Oct. 23, 2018), [https://www.brownsvilleherald.com/news/local/brownsvillevoters-head-to-polls-for-elections/article\\_08209668-d6db-11e8-814f6f246a494ab9.html](https://www.brownsvilleherald.com/news/local/brownsvillevoters-head-to-polls-for-elections/article_08209668-d6db-11e8-814f6f246a494ab9.html) (showing UT RGV Brownsville campus as a polling site).

<sup>19</sup> See Elizabeth Trovall, *Report: Fewer International Students Enrolled In Texas 18 Endnotes Schools*, HOUSTON PUBLIC MEDIA (Apr. 30, 2018), <https://www.houstonpublicmedia.org/articles/news/2018/04/30/282559/report-fewer-international-students-enrolled-in-texas-schools/> (stating that international student enrollment in Texas colleges is 86,076).

<sup>20</sup> List of universities in Texas by enrollment, WIKIPEDIA, [https://en.wikipedia.org/wiki/List\\_of\\_universities\\_in\\_Texas\\_by\\_enrollment](https://en.wikipedia.org/wiki/List_of_universities_in_Texas_by_enrollment).

<sup>21</sup> Letter to Secretary of State Ruth Hughs regarding Texas counties providing fewer polling places than required by law, (May 13, 2020), <https://texascivilrightsproject.org/wp-content/uploads/2020/05/2020-05-13-SOS-Letter-Polling-Places.pdf>.